

**REMARKS**

Applicant has carefully studied the Office Action of July 23, 2004, and offers the following remarks to accompany the above amendments.

Applicant initially amends allowable claims 23, 24, 42, and 43 into independent form. Applicant encloses a credit card form in the amount of \$344.00 to cover the four additional independent claims. Claims 23, 24, 42, and 43 should now be in a condition for allowance.

Applicant also amends claims 1, 2, 3, 12, 14, 25, 26, 34, 35, 36, 44, 45, 46, 53, and 54 to clarify that the modules being discussed are "the telephony modules". Claims 20, 23, and 24 are amended to clarify the antecedent basis for the "network". Claims 18, 23, and 24 are amended to clarify the antecedent basis of the "nodes". Claim 25 is amended to correct a typographical error. No new matter is added and no new issues should be raised by these amendments.

The Patent Office indicates in paragraph 1 of the Office Action that the amendment filed under 37 C.F.R. § 1.131 has been considered. Applicant respectfully queries what is intended by this statement. Applicant did not file a response or a declaration under 37 C.F.R. § 1.131. Applicant requests clarification of what was intended by this statement.

Claims 1-4, 6, 7, 9, 12, 14-21, 25-28, 30, 31, 33, 36-41, 44-47, 49, 50, and 52 were rejected under 35 U.S.C. § 102(e) as being anticipated by Miriyala. Applicant respectfully traverses. For a reference to be anticipatory, the reference must disclose each and every claim element. Further, the elements of the reference must be arranged as claimed. MPEP § 2131. The requirement that each and every element be disclosed in the manner claimed is a rigorous standard that the Patent Office has not met in this case.

Applicant notes that the text on pages 2-8 of the Office Action of July 23, 2004 appears to be a verbatim quote from paragraph 2 of the Office Action of February 12, 2004 (see Office Action of February 12, 2004, pages 2-8). However, this text was thoroughly addressed by Applicant in the Response filed May 12, 2004. Applicant further notes that the text in paragraph 3 of the Office Action of July 23, 2004 contradicts the text under the Response to Arguments (paragraph 8) of the Office Action of July 23, 2004. For example, in paragraph 3, the first module is identified as element 306 and the redundant module is identified as element 308. In contrast, in paragraph 8, element 310 is identified as the active module and element 306 is identified as the redundant module. Another example is that Group 1 is initially identified as the telephony node, but in paragraph 8, Group 1 is interpreted to be the network interface. Applicant

respectfully requests clarification as to which interpretation the Patent Office is using to reject the claims.

Applicant has previously shown how the analysis presented in paragraph 3 of the Office Action of July 23, 2004 is incorrect and does not meet the strict requirements of an anticipation rejection. Thus, Applicant's arguments will focus on the new arguments presented by the Patent Office in paragraph 8 of the current Office Action. For the purposes of appeal, Applicant requests that the earlier presented arguments be preserved as if fully set forth herein.

Applicant turns now to the arguments presented by the Patent Office in paragraph 8, and respectfully traverses the arguments presented therein. Applicant addresses these arguments in the order presented.

The Patent Office states: "Applicant argues that the Miriyala reference (US 6,618,377) fails to disclose that first module and redundant module are not clearly identified. . . ." Applicant made no such argument. Applicant argued that the Patent Office's identification of element 306 as the first module and element 308 as the second module contradicted the Patent Office's assertion that 306, 308 and 310 were the network interface.

Regardless of whether Applicant made the argument set forth by the Patent Office, Applicant further addresses the Patent Office's response thereto. Specifically, the Patent Office now identifies Groups 1 and 2 as the network interface, and the ARP server 302 as the control system associated with the two network interfaces. Applicant notes that this is not what the claims recite. Claim 1 recites a "telephony module for operating in conjunction with a redundant module to form a node in a telephony system, said telephony module comprising: a network interface; and a control system. . . ." The Patent Office's new identification of Groups 1 and 2 as the network interfaces and 302 as the control system, means that the telephony module must be Miriyala element 300. However, Miriyala element 300 is demonstrably not a telephony module. Miriyala element 300 is described as the network group 300 (e.g., a logical IP subnet or LIS), see column 2, lines 51-52 and column 7, lines 16-17. A network group is not a telephony module as recited in the claims. Even if a network is a telephony module, then there is no redundant module with which to form a node as recited in the claim.

The Patent Office goes on to state that Miriyala designates the devices as either active or standby. However, that is not what the claims recite. Claim 1 recites a control system that operates in an active mode when the redundant module is inactive, and in an inactive mode when

the redundant module is active. The claim language clearly recites that the **control system** has two states. The Patent Office in paragraph 8 has clearly identified Miriyala element 302 as the control system. Miriyala element 302 does not change state; rather as admitted by the Patent Office, ARP clients 310 and 306 as change states. The Patent Office explains at page 14 that when 310 is switching, element 302 (**identified by the Patent Office as the control system**) sees it [element 310] as the active device, and sees ARP client 306 as the standby device. The claim does not recite that the control system sees the different states of the active and standby devices. The claim recites that the control system changes state. The Patent Office's response continues to fail to show where the control system (not the clients) changes states, as recited in the claim. Since Miriyala's control system 302 does not change states as recited in the claim, Miriyala cannot anticipate claim 1.

The Patent Office compounds the error by asserting that 310 is the active module and ARP client 306 is the redundant module. However, claim 1 does not recite an active module and a redundant module; claim 1 recites that the telephony module has a network interface and a control system. Even if it was appropriate to label 310 as the telephony module, 310 does not have a network interface (identified by the Patent Office as Group 1 and Group 2) or a control system, since the Patent Office identifies 302 as the control system.

Applicant reminds the Patent Office that anticipation requires identity between the reference and the claim, not just in the claim elements, but also in how the elements of the reference are arranged. MPEP § 2131. This standard requires the Patent Office to have a consistent interpretation of the reference in an anticipation rejection, and the Patent Office is not allowed to pick elements from different systems within the reference to construct an anticipation rejection. Miriyala's control system does not have two states as recited in the claim, nor does the element that the Patent Office identifies as a module have the control system and network interface, as recited in the claim. Since Miriyala does not teach the recited claim elements, the claim is not anticipated and should be allowed.

The Patent Office's next argument relates to Applicant's argument that "Miriyala fails to show where the network interface using [sic] a second IP address when it is in the inactive mode." The Patent Office now supplements its arguments by reference to column 10, lines 36-49. However, as pointed out above, for anticipation, the elements of the reference must be arranged as claimed. Column 10, lines 36-49 talk about an ARMARP LIS 400, and particularly

ARP clients 408 and 406. These are not the same elements previously used by the Patent Office in its analysis. Furthermore, even if ARP clients 408 and 406 were the clients 308 and 306 used in the rest of the analysis, it is not the clients which change IP addresses in the claim, but the control system. Specifically, claim 1 recites "a control system . . . adapted to: . . . communicate via the network interface using a second IP address when operating in the inactive mode. . . ." Thus, according to the Patent Office's interpretations, to match the claim language, the control system 302 must communicate via Group 1 or Group 2 using a second IP address. Miriyala does not teach this arrangement, and thus, does not anticipate the claim.

As previously noted, the other independent claims recite similar elements, and are not anticipated for the same reasons. Applicant requests withdrawal of the § 102 rejection of claims 1-4, 6, 7, 9, 12, 14-21, 25-28, 30, 31, 33, 36-41, 44-47, 49, 50, and 52 at this time.

With respect to claims 2, 26, and 45, the Patent Office responds to Applicant's arguments by noting that column 8, lines 1-27 of Miriyala disclose an NSAP address, and opines that this meets the recited claim limitation. Applicant respectfully traverses this conclusion. Claim 2 recites "wherein the control system is further adapted to communicate via the network interface using a unit IP address . . . ." Miriyala distinguishes between NSAP and IP addresses as belonging to different levels of the protocol stack. Specifically, at column 8, lines 20-25, Miriyala indicates that because "two ARP clients within the group may have the same IP address, distinguishing between the two is thus the responsibility of the ATMARP Server 302 using the **relevant lower level address system**." The next sentence of the reference describes the exemplary NSAP addresses as the lower level address. NSAP addresses are not IP addresses, and cannot anticipate a claim element that recites an IP address. The Patent Office acknowledges the distinction between an IP address and a hardware address in its analysis of claim 3.

Since the reference does not show a claim element for which it is cited, the claims are not anticipated, and Applicant requests withdrawal of the § 102 rejection of claims 2, 26, and 45 on this basis.

The Patent Office responds to Applicant's arguments about claims 3, 4, 20, 27, 28, 40, 46, and 47 by pointing to column 3, lines 55-62. This does not respond to Applicant's arguments. Applicant previously argued that anticipation requires that the elements be arranged as claimed, and that the previous citation to column 3, lines 10-14 were directed to a prior art figure. Since

the citation discussed a different system, it was not arranged relative to the elements used to reject the independent claims. The Patent Office is not free to pick and choose elements from various portions of a single reference, assemble these elements into a composite system, and call the reference an anticipatory reference. The Patent Office's new citation is directed at Figure 1B, which is another prior art figure that is not arranged relative to the elements used to reject the independent claims. Since the Patent Office is continuing to extract elements from different portions of the reference and assemble them into the rejection, the reference is not anticipatory, and the rejection is improper. Since the rejection is improper, Applicant requests withdrawal of the § 102 rejection of claims 3, 4, 20, 27, 28, 40, 46, and 48 at this time.

Claims 5, 8, 29, 32, 48, and 51 were rejected under 35 U.S.C. § 103 as being unpatentable over Miriyala in view of Bender. Applicant respectfully traverses for the reasons set forth in the previous response. Specifically, Bender does not cure the deficiencies of Miriyala. Applicant's arguments were directed to the point that since Miriyala does not show the elements for which it is cited, the combination of Miriyala and Bender, which relies on the flawed construction of Miriyala, cannot show all the claim elements. Since the combination does not show all the claim elements, the Patent Office has not established obviousness, and the claims are allowable. The Patent Office's Response does not respond to this Argument.

Claims 10, 11, 22, 34, 35, 53, and 54 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miriyala in view of Lelaure et al. (hereinafter "Lelaure"). Applicant respectfully traverses for the reasons set forth in the previous response. Specifically, Lelaure does not cure the deficiencies of Miriyala. Applicant's arguments were directed to the point that since Miriyala does not show the elements for which it is cited, the combination of Miriyala and Lelaure, which relies on the flawed construction of Miriyala, cannot show all the claim elements. Since the combination does not show all the claim elements, the Patent Office has not established obviousness, and the claims are allowable. The Patent Office's Response does not respond to this Argument.

Claim 13 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Miriyala in view of Onweller. Applicant respectfully traverses for the reasons set forth in the previous response. Specifically, Onweller does not cure the deficiencies of Miriyala. Applicant's arguments were directed to the point that since Miriyala does not show the elements for which it is cited, the combination of Miriyala and Onweller, which relies on the flawed construction of

Miriyala, cannot show all the claim elements. Since the combination does not show all the claim elements, the Patent Office has not established obviousness, and the claims are allowable. The Patent Office's Response does not respond to this Argument.

Applicant also addresses a confusing sentence on page 16 of the Office Action. Specifically, the Patent Office states "[it] is concluded that the Maggenti reference taken in it [sic] entirety continues to anticipate claims 1-4, 6, 7, 9, 12, 14-21, 25-28, 30, 31, 33, 36-41, 45-47, 49, 50, and 52. . . ." Maggenti has never been cited against the claims. If the Patent Office is now citing Maggenti, Applicant requests removal of the finality of the present Office Action and a first opportunity to respond to this new basis for rejection of claims that were not amended.

Applicant requests reconsideration of the rejection and claim allowance at the Examiner's earliest convenience.

Respectfully submitted,

WITHROW & TERRANOVA, P.L.L.C.

By:

Benjamin S. Withrow  
Registration No. 40,876  
P.O. Box 1287  
Cary, NC 27512  
Telephone: (919) 654-4520

Date: September 22, 2004  
Attorney Docket: 7000-028

<b>CERTIFICATE OF TRANSMISSION</b>	
I HEREBY CERTIFY THAT THIS DOCUMENT IS BEING TRANSMITTED VIA FACSIMILE ON THE DATE INDICATED BELOW TO:	
Examiner: <u>Nguyen Alan V.</u>	Art Unit: <u>2662</u> Fax: <u>703-872-9306</u>
<u>REBECCA ROCKS</u> Name of Sender	
<u>Rebecca Kelly</u> Signature	
<u>9/22/04</u> Date of Transmission	